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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/658,321	09/08/2000	Gerhard J. Mueller	GK-ZEI-3103/ 500343.20100	3537

7590

05/13/2003

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EXAMINER

NGUYEN, THONG Q

ART UNIT

PAPER NUMBER

2872

DATE MAILED: 05/13/2003

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Please find below and/or attached an Office communication concerning this application or proceeding.



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APPLICATION NO./ CONTROL NO.	FILING DATE	FIRST NAMED INVENTOR / PATENT IN REEXAMINATION	ATTORNEY DOCKET NO.
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EXAMINER
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ART UNIT	PAPER
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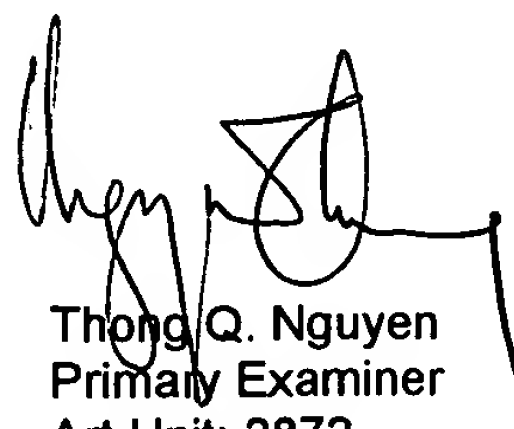
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SEE ATTACHED SHEETS.

ENC.: A COPY OF INTERVIEW IS ATTACHED WITH THIS OFFICE ACTION.

  
Thong Q. Nguyen  
Primary Examiner  
Art Unit: 2872

Art Unit: 2872

### **DETAILED ACTION**

1. The present office action is made in response to the interview between the applicant, Daniel P. Lent, and the Supervisor of Art Unit 2872, Cassandra Spyrou, on 4/29/2003.
2. Applicant is respectfully invited to review the decision made by the Supervisor as listed in the papers attached to this Office action.
3. The reply filed on 7/23/2002 and the reply filed on 2/25/2003 both are not fully responsive to the Office actions (Paper Nos. 11 and 18) because all of the amended claims are now not directed to the species elected by the applicant in the election (Paper No. 9) of 11/7/2001. See the reasons as set forth below. See also the opinion of the Supervisor in the attached sheets.
4. Applicant is advised that an extension of time and a correspond fee need to be filed, if required, with any communication so that such a communication is able to enter into the present application.
5. Reasons to support for the non-response of the amendments.

The amended claims are directed to an invention that is independent or distinct from the invention originally claimed for the following reasons:

The present application was subjected to a restriction requirement (see Paper No. 7 of 8/7/2001). In response to the restriction requirement applicant elected the species shown in figure 2 (Paper No. 9 of 11/7/01). The application with the elected species shown in figure 2 which includes claims 16-20, 23-26, 28 and 31 was examined and an Office action was mailed to applicant on 1/29/02 (Paper No. 11).

In response to the mentioned Office action, applicant has filed a set of amendments (Paper Nos. 17, 19 and 20) in which applicant has amended claims 16, 18-19, 24-25, 28 and 31, and added new claim 34. After carefully review the subject matter recited in amended claims and the newly-added claim, the following conclusions have been made.

1) The amendment to claim 16 bring material disclosed in the non-elected species into the claim; (Note: The support for this conclusion is found in the present specification which details are provided below) thus, the claims 16 and 18-33 are not examined in this Office action because applicant has received an action on the merits for the originally presented invention, this invention has been constructively elected by original presentation for prosecution on the merits. Accordingly, claims 16 and 18-33 have been withdrawn from consideration as being directed to a non-elected invention. See 37 CFR 1.142(b) and MPEP § 821.03.

It is also noted that applicant's request/arguments regarding to the subject matters added to the original claim 16 have been fully considered but they are not persuasive.

2) Newly-added claim 34 contain subject matter regard to the use of reflector and its position in the system which features are similar to the features recited in amended claim 16, thus this claim is also grouped into the non-elected species shown in figure 1.

Note: The materials which are newly-added to claim 16 and the features recited in new claim 34 make the device recited in each claim now directs to the none-elected species shown in figure 1.

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The use of mirror in the pupil plane of the object is disclosed in the embodiment1 disclosed in the specification in pages 6-7 and shown in figure 1. The amended claim 16 and new claim 34 is not directed to the elected species shown in figure 2 described in the specification in pages 7-8. Applicant is respectfully invited to review the specification at pages 6-8 and fig. 1 in which they disclose the use of two mirrors (12 and 5) at the pupil plane of the objectives (2 and 3). The embodiment described in specification in pages 7-8 and shown in figure 2 disclose the use of only one mirror (23) at a focal plane of the objective lens (23). There is not any reflector in the pupil plane of ether objective lens (20 or 21).

3) With regard to the applicant's arguments as provided in the amendment of 12/11/02, the examiner offers the following opinions.

With regard to the features thereof "wherein a transmitted excitation...phase front" recited on last three lines of claim 16, such a feature is considered as a new matter to the invention because the specification as originally filed does not disclose any embodiment having such a recitation as set forth in the mentioned features. Applicant should note that the use of reflector (12) in the embodiment shown in figure 1 is for the purpose of transmittance illuminating light but reflectance fluorescent light back onto the specimen (see specification, page 7, lines 22-25). The use of excitation filter (7), barrier (or blocking) filter (10) and dichroic beam-splitter in the illuminating path provided by light source (6) is for the purpose of exciting fluorescent agent in the sample wherein the light source (6). In the embodiment described in pages 7-8 and shown in figure 2, the following features are disclosed: 1) there is only one mirror (23) disclosed at the

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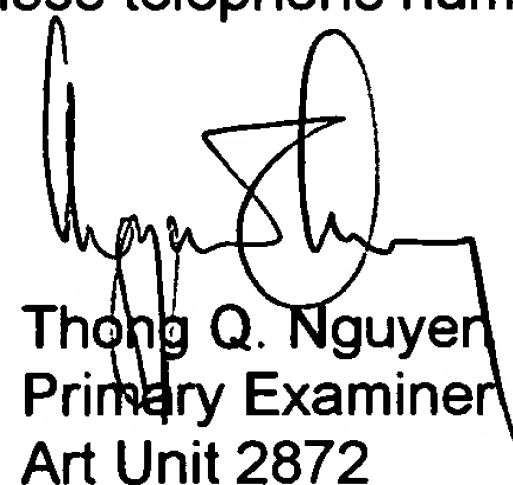
focal plane of the objective (21); 2) laser is used; 3) there is not any excitation and blocking filters be used in the illuminating system and there is not any description regarding the structure of the beam-splitter (18).

***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Thong Q. Nguyen whose telephone number is (703) 308-4814. The examiner can normally be reached on M-F.

The fax phone numbers for the organization where this application or proceeding is assigned are (703) 308-7722 for regular communications and (703) 308-7722 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703 308 0956.



Thong Q. Nguyen  
Primary Examiner  
Art Unit 2872

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May 6, 2003